IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 69 of 2005

ROOPLAL & ORS
V/S
HEMRAJ

Mr. SL JAIN, for the appellant / petitioner

Mr. JS RAO for Mr. BR MEHTA, for the respondent

Date of Order : 26.7.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the record.

The learned lower Appellate Court has found that the finding of the learned trial court, about the way, recorded in revenue record, being confined to be used by the residents of village Mohna, cannot be sustained. It has also been found that it is admitted position that the defendants' obstruction on the way being Araji No. 66 Meen was removed by the Tehsildar and Patwari, and it is also admitted position that Araji No. 66 Meen is Government way. Considering these circumstances, it has been found by the learned lower Appellate Court that when the land is recorded as Government way everybody has a right to pass and re-pass, and the defendant has no right to obstruct,

therefore, the finding on issue no.1 recorded by the learned trial court was set aside by the learned lower Appellate Court, and the learned lower Appellate Court has decided the issue no.1 in favour of the plaintiff, and consequently decreed the suit.

Learned counsel for the appellant submitted that he hs filed application under O. 41 Rule 27 C.P.C., for producing earlier Jamabandi, to show, that the Araji No. 66 Meen was not recorded as way. In my view, the learned lower Appellate Court had remanded the matter to the learned trial court vide order dt. 29.11.2002, as it had taken on record Jamabandi produced by the plaintiff, by way of additional evidence, and directed the learned trial court to give opportunity to the parties to lead evidence. Thereupon, after receipt of the matter by the learned trial court, consequent upon remand, the learned trial court recorded the evidence of the plaintiff, which was closed on 13.10.2003. Then, on 7.11.2003 the appellant examined D.W.1 Madhu, and closed his evidence voluntarily. Thus since the appellant had sufficient opportunity to rebut the evidence, taken on record by the learned lower Appellate Court as additional evidence, there is no justification for accepting the application under O. 41 Rule 27 C.P.C. That apart a look at the statement of Madhu, recorded on 7.11.2003, does show, that it is admitted by him, that Araji No. 66 Meen is a Government way, and its width is

also enough to provide passage to carts. In my view, in view of this admission also there is no sufficient ground for taking on record the documents sought to be produced by way of application under O. 41 Rule 27 C.P.C. by the appellant. The application is, therefore, rejected.

I have gone through the evidence of the parties, and documents, as is there on record, and in my view, the findings recorded by the learned lower Appellate Court are fully supported by the evidence on record, and are not vitiated on any of the grounds available under Section 100 C.P.C. It was contended by the learned counsel, that the plaintiff has another way in village Vijaypur, and therefore, he is not entitled to injunction, regarding the way in Araji 66 Meen. Suffice it to say, that this is not a relevant consideration, as the injunction is not sought on the easement of necessity, rather it was sought on the ground, that Araji 66 Meen was a public way, which was obstructed by the defendant, and it has rightly been found by the learned lower Appellate Court, that admittedly Araji 66 Meen is a public way (Government way). Obviously, on Government way everybody has a right to pass and re-pass, and that cannot be allowed to be obstructed. Thus, I do not find any force in the appeal. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/